

House _____ Amendment NO. _____

Offered By

1 AMEND Senate Committee Substitute for Senate Bill No. 612, Page 1, in the Title, Line 3, by
2 deleting the words, "nonresident entertainer income taxes" ad inserting in lieu thereof the words
3 "taxation"; and
4

5 Further amend said bill, Page 5, Section 143.183, Line 142, by inserting immediately after said line
6 the following:
7

8 "143.451. 1. Missouri taxable income of a corporation shall include all income derived from
9 sources within this state.

10 2. A corporation described in subdivision (1) of subsection 1 of section 143.441 shall include
11 in its Missouri taxable income all income from sources within this state, including that from the
12 transaction of business in this state and that from the transaction of business partly done in this state
13 and partly done in another state or states. However:

14 (1) Where income results from a transaction partially in this state and partially in another
15 state or states, and income and deductions of the portion in the state cannot be segregated, then such
16 portions of income and deductions shall be allocated in this state and the other state or states as will
17 distribute to this state a portion based upon the portion of the transaction in this state and the portion
18 in such other state or states.

19 (2) The taxpayer may elect to compute the portion of income from all sources in this state in
20 the following manner, or the manner set forth in subdivision (3) of this subsection:

21 (a) The income from all sources shall be determined as provided, excluding therefrom the figures
22 for the operation of any bridge connecting this state with another state.

23 (b) The amount of sales which are transactions wholly in this state shall be added to one-half
24 of the amount of sales which are transactions partly within this state and partly without this state, and
25 the amount thus obtained shall be divided by the total sales or in cases where sales do not express the
26 volume of business, the amount of business transacted wholly in this state shall be added to one-half
27 of the amount of business transacted partly in this state and partly outside this state and the amount
28 thus obtained shall be divided by the total amount of business transacted, and the net income shall be
29 multiplied by the fraction thus obtained, to determine the proportion of income to be used to arrive at
30 the amount of Missouri taxable income. The investment or reinvestment of its own funds, or sale of
31 any such investment or reinvestment, shall not be considered as sales or other business transacted for
32 the determination of said fraction.

33 (c) For the purposes of this subdivision, a transaction involving the sale of tangible property
34 is:

35 a. "Wholly in this state" if both the seller's shipping point and the purchaser's destination
36 point are in this state;

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1 b. "Partly within this state and partly without this state" if the seller's shipping point is in this
 2 state and the purchaser's destination point is outside this state, or the seller's shipping point is outside
 3 this state and the purchaser's destination point is in this state;

4 c. Not "wholly in this state" or not "partly within this state and partly without this state" only
 5 if both the seller's shipping point and the purchaser's destination point are outside this state.

6 (d) For purposes of this subdivision:

7 a. The purchaser's destination point shall be determined without regard to the FOB point or
 8 other conditions of the sale; and

9 b. The seller's shipping point is determined without regard to the location of the seller's
 10 principle office or place of business.

11 (3) The taxpayer may elect to compute the portion of income from all sources in this state in
 12 the following manner:

13 (a) The income from all sources shall be determined as provided, excluding therefrom the
 14 figures for the operation of any bridge connecting this state with another state;

15 (b) The amount of sales which are transactions in this state shall be divided by the total sales,
 16 and the net income shall be multiplied by the fraction thus obtained, to determine the proportion of
 17 income to be used to arrive at the amount of Missouri taxable income. The investment or
 18 reinvestment of its own funds, or sale of any such investment or reinvestment, shall not be
 19 considered as sales or other business transacted for the determination of said fraction;

20 (c) For the purposes of this subdivision, a transaction involving the sale of tangible property
 21 is:

22 a. "In this state" if the purchaser's destination point is in this state;

23 b. Not "in this state" if the purchaser's destination point is outside this state;

24 (d) For purposes of this subdivision, the purchaser's destination point shall be determined
 25 without regard to the FOB point or other conditions of the sale and shall not be in this state if the
 26 purchaser received the tangible personal property from the seller in this state for delivery to the
 27 purchaser's location outside this state;

28 (e) For the purposes of this subdivision, a transaction involving the sale other than the sale of
 29 tangible property is "in this state" if the taxpayer's market for the sales is in this state. The taxpayer's
 30 market for sales is in this state:

31 a. In the case of sale, rental, lease, or license of real property, if and to the extent the property
 32 is located in this state;

33 b. In the case of rental, lease, or license of tangible personal property, if and to the extent the
 34 property is located in this state;

35 c. In the case of sale of a service, if and to the extent the benefit of the service is delivered to
 36 a purchaser location in this state; and

37 d. In the case of intangible property:

38 (i) That is rented, leased, or licensed, if and to the extent the property is used in this state by
 39 the rentee, lessee, or licensee, provided that intangible property utilized in marketing a good or
 40 service to a consumer is "used in this state" if that good or service is purchased by a consumer who is
 41 in this state. Franchise fees or royalties received for the rent, lease, license, or use of a trade name,
 42 trademark, service mark, or franchise system or provides a right to conduct business activity in a
 43 specific geographic area are "used in this state" to the extent the franchise location is in this state; and

44 (ii) That is sold, if and to the extent the property is used in this state, provided that:

45 i. A contract right, government license, or similar intangible property that authorizes the
 46 holder to conduct a business activity in a specific geographic area is "used in this state" if the
 47 geographic area includes all or part of this state;

48 ii. Receipts from intangible property sales that are contingent on the productivity, use, or

disposition of the intangible property shall be treated as receipts from the rental, lease, or licensing of such intangible property under item (i) of this subparagraph; and

iii. All other receipts from a sales of intangible property shall be excluded from the numerator and denominator of the sales factor;

(f) If the state or states of assignment under paragraph (e) of this subdivision cannot be determined, the state or states of assignment shall be reasonably approximated;

(g) If the state of assignment cannot be determined under paragraph (e) of this subdivision or reasonably approximated under paragraph (f) of this subdivision, such sales shall be excluded from the denominator of the sales factor;

(h) The director may prescribe such rules and regulations as necessary or appropriate to carry out the purposes of this section.

(4) For purposes of this subsection, the following words shall, unless the context otherwise requires, have the following meaning:

(a) "Administration services" include, but are not limited to, clerical, fund or shareholder accounting, participant record keeping, transfer agency, bookkeeping, data processing, custodial, internal auditing, legal and tax services performed for an investment company;

(b) "Affiliate", the meaning as set forth in 15 U.S.C. Section 80a-2(a)(3)(C), as may be amended from time to time;

(c) "Distribution services" include, but are not limited to, the services of advertising, servicing, marketing, underwriting or selling shares of an investment company, but, in the case of advertising, servicing or marketing shares, only where such service is performed by a person who is, or in the case of a closed end company, was, either engaged in the services of underwriting or selling investment company shares or affiliated with a person that is engaged in the service of underwriting or selling investment company shares. In the case of an open end company, such service of underwriting or selling shares must be performed pursuant to a contract entered into pursuant to 15 U.S.C. Section 80a-15(b), as from time to time amended;

(d) "Investment company", any person registered under the federal Investment Company Act of 1940, as amended from time to time, (the act) or a company which would be required to register as an investment company under the act except that such person is exempt to such registration pursuant to Section 80a-3(c)(1) of the act;

(e) "Investment funds service corporation" includes any corporation or S corporation doing business in the state which derives more than fifty percent of its gross income in the ordinary course of business from the provision directly or indirectly of management, distribution or administration services to or on behalf of an investment company or from trustees, sponsors and participants of employee benefit plans which have accounts in an investment company. An investment funds service corporation shall include any corporation or S corporation providing management services as an investment advisory firm registered under Section 203 of the Investment Advisors Act of 1940, as amended from time to time, regardless of the percentage of gross revenues consisting of fees from management services provided to or on behalf of an investment company;

(f) "Management services" include but are not limited to, the rendering of investment advice directly or indirectly to an investment company making determinations as to when sales and purchases of securities are to be made on behalf of the investment company, or the selling or purchasing of securities constituting assets of an investment company, and related activities, but only where such activity or activities are performed:

a. Pursuant to a contract with the investment company entered into pursuant to 15 U.S.C. Section 80a-15(a), as from time to time amended;

b. For a person that has entered into such contract with the investment company; or

c. For a person that is affiliated with a person that has entered into such contract with an

1 investment company;

2 (g) "Qualifying sales", gross income derived from the provision directly or indirectly of
3 management, distribution or administration services to or on behalf of an investment company or
4 from trustees, sponsors and participants of employee benefit plans which have accounts in an
5 investment company. For purposes of this section, "gross income" is defined as that amount of
6 income earned from qualifying sources without deduction of expenses related to the generation of
7 such income;

8 (h) "Residence", presumptively the fund shareholder's mailing address on the records of the
9 investment company. If, however, the investment company or the investment funds service
10 corporation has actual knowledge that the fund shareholder's primary residence or principal place of
11 business is different than the fund shareholder's mailing address such presumption shall not control.
12 To the extent an investment funds service corporation does not have access to the records of the
13 investment company, the investment funds service corporation may employ reasonable methods to
14 determine the investment company fund shareholder's residence.

15 (5) Notwithstanding other provisions of law to the contrary, qualifying sales of an
16 investment funds service corporation, or S corporation, shall be considered wholly in this state only
17 to the extent that the fund shareholders of the investment companies, to which the investment funds
18 service corporation, or S corporation, provide services, are resided in this state. Wholly in this
19 state qualifying sales of an investment funds service corporation, or S corporation, shall be
20 determined as follows:

21 (a) By multiplying the investment funds service corporation's total dollar amount of
22 qualifying sales from services provided to each investment company by a fraction, the numerator of
23 which shall be the average of the number of shares owned by the investment company's fund
24 shareholders resided in this state at the beginning of and at the end of the investment company's
25 taxable year that ends with or within the investment funds service corporation's taxable year, and the
26 denominator of which shall be the average of the number of shares owned by the investment
27 company's fund shareholders everywhere at the beginning of and at the end of the investment
28 company's taxable year that ends with or within the investment funds service corporation's taxable
29 year;

30 (b) A separate computation shall be made to determine the wholly in this state qualifying
31 sales from each investment company. The qualifying sales for each investment company shall be
32 multiplied by the respective percentage of each fund, as calculated pursuant to paragraph (a) of this
33 subdivision. The product of this equation shall result in the wholly in this state qualifying sales. The
34 qualifying sales for each investment company which are not wholly in this state will be considered
35 wholly without this state;

36 (c) To the extent an investment funds service corporation has sales which are not qualifying
37 sales, those nonqualified sales shall be apportioned to this state based on the methodology utilized by
38 the investment funds service corporation without regard to this subdivision.

39 3. Any corporation described in subdivision (1) of subsection 1 of section 143.441 organized
40 in this state or granted a permit to operate in this state for the transportation or care of passengers
41 shall report its gross earnings within the state on intrastate business and shall also report its gross
42 earnings on all interstate business done in this state which report shall be subject to inquiry for the
43 purpose of determining the amount of income to be included in Missouri taxable income. The
44 previous sentence shall not apply to a railroad.

45 4. A corporation described in subdivision (2) of subsection 1 of section 143.441 shall include
46 in its Missouri taxable income all income arising from all sources in this state and all income from
47 each transportation service wholly within this state, from each service where the only lines of such
48 corporation used are those in this state, and such proportion of revenue from each service where the

1 facilities of such corporation in this state and in another state or states are used, as the mileage used
2 over the lines of such corporation in the state shall bear to the total mileage used over the lines of
3 such corporation. The taxpayer may elect to compute the portion of income from all sources within
4 this state in the following manner:

5 (1) The income from all sources shall be determined as provided;

6 (2) The amount of investment of such corporation on December thirty-first of each year in
7 this state in fixed transportation facilities, real estate and improvements, plus the value on December
8 thirty-first of each year of any fixed transportation facilities, real estate and improvements in this
9 state leased from any other railroad shall be divided by the sum of the total amount of investment of
10 such corporation on December thirty-first of each year in fixed transportation facilities, real estate
11 and improvements, plus the value on December thirty-first of each year, of any fixed transportation
12 facilities, real estate and improvements leased from any other railroad. Where any fixed
13 transportation facilities, real estate or improvements are leased by more than one railroad, such
14 portion of the value shall be used by each railroad as the rental paid by each shall bear to the rental
15 paid by all lessees. The income shall be multiplied by the fraction thus obtained to determine the
16 proportion to be used to arrive at the amount of Missouri taxable income.

17 5. A corporation described in subdivision (3) of subsection 1 of section 143.441 shall include
18 in its Missouri taxable income one-half of the net income from the operation of a bridge between this
19 and another state. If any such bridge is owned or operated by a railroad corporation or corporations,
20 or by a corporation owning a railroad corporation using such bridge, then the figures for operation of
21 such bridge may be included in the return of such railroad or railroads; or if such bridge is owned or
22 operated by any other corporation which may now or hereafter be required to file an income tax
23 return, one-half of the income or loss to such corporation from such bridge may be included in such
24 return by adding or subtracting same to or from another net income or loss shown by the return.

25 6. A corporation described in subdivision (4) of subsection 1 of section 143.441 shall include
26 in its Missouri taxable income all income arising from all sources within this state. Income shall
27 include revenue from each telephonic or telegraphic service rendered wholly within this state; from
28 each service rendered for which the only facilities of such corporation used are those in this state;
29 and from each service rendered over the facilities of such corporation in this state and in other state
30 or states, such proportion of such revenue as the mileage involved in this state shall bear to the total
31 mileage involved over the lines of said company in all states. The taxpayer may elect to compute the
32 portion of income from all sources within this state in the following manner:

33 (1) The income from all sources shall be determined as provided;

34 (2) The amount of investment of such corporation on December thirty-first of each year in
35 this state in telephonic or telegraphic facilities, real estate and improvements thereon, shall be
36 divided by the amount of the total investment of such corporation on December thirty-first of each
37 year in telephonic or telegraphic facilities, real estate and improvements. The income of the
38 taxpayer shall be multiplied by fraction thus obtained to determine the proportion to be used to arrive
39 at the amount of Missouri taxable income.

40 7. From the income determined in subsections 2, 3, 4, 5 and 6 of this section to be from all
41 sources within this state shall be deducted such of the deductions for expenses in determining
42 Missouri taxable income as were incurred in this state to produce such income and all losses actually
43 sustained in this state in the business of the corporation.

44 8. If a corporation derives only part of its income from sources within Missouri, its Missouri
45 taxable income shall only reflect the effect of the following listed deductions to the extent applicable
46 to Missouri. The deductions are: (a) its deduction for federal income taxes pursuant to section
47 143.171, and (b) the effect on Missouri taxable income of the deduction for net operating loss
48 allowed by Section 172 of the Internal Revenue Code. The extent applicable to Missouri shall be

determined by multiplying the amount that would otherwise affect Missouri taxable income by the ratio for the year of the Missouri taxable income of the corporation for the year divided by the Missouri taxable income for the year as though the corporation had derived all of its income from sources within Missouri. For the purpose of the preceding sentence, Missouri taxable income shall not reflect the listed deductions.

9. Any investment funds service corporation organized as a corporation or S corporation which has any shareholders resided in this state shall be subject to Missouri income tax as provided in this chapter."; and

Further amend said bill, Page 5, Section 143.183, Line 142, by inserting immediately after said line the following:

"144.021. 1. The purpose and intent of sections 144.010 to 144.510 is to impose a tax upon the privilege of engaging in the business, in this state, of selling tangible personal property and those services listed in section 144.020 and for the privilege of titling new and used motor vehicles, trailers, boats, and outboard motors purchased or acquired for use on the highways or waters of this state which are required to be registered under the laws of the state of Missouri. Except as otherwise provided, the primary tax burden is placed upon the seller making the taxable sales of property or service and is levied at the rate provided for in section 144.020. Excluding subdivision (9) of subsection 1 of section 144.020 and sections 144.070, 144.440 and 144.450, the extent to which a seller is required to collect the tax from the purchaser of the taxable property or service is governed by section 144.285 and in no way affects sections 144.080 and 144.100, which require all sellers to report to the director of revenue their "gross receipts", defined herein to mean the aggregate amount of the sales price of all sales at retail, and remit tax at four percent of their gross receipts.

2. If the amount of taxes due under sections 144.010 to 144.510 is modified by a decision of:

(1) The director of revenue;

(2) The administrative hearing commission; or

(3) A court of competent jurisdiction;

which changes which items of tangible personal property or services are taxable, all affected sellers shall be notified by the department of revenue before such modification shall take effect for such sellers. Failure of the department of revenue to notify a seller shall relieve such seller of liability for taxes that would be due under the modification until the seller is notified. The waiver of liability for taxes under this subsection shall only apply to sellers actively selling the type of tangible personal property or service affected by the decision on the date the decision is made or handed down.

144.054. 1. As used in this section, the following terms mean:

(1) "Processing", any mode of treatment, act, or series of acts performed upon materials to transform or reduce them to a different state or thing, including treatment necessary to maintain or preserve such processing by the producer at the production facility;

(2) "Recovered materials", those materials which have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not they require subsequent separation and processing.

2. In addition to all other exemptions granted under this chapter, there is hereby specifically exempted from the provisions of sections 144.010 to 144.525 and 144.600 to 144.761, and from the computation of the tax levied, assessed, or payable under sections 144.010 to 144.525 and 144.600 to 144.761, electrical energy and gas, whether natural, artificial, or propane, water, coal, and energy sources, chemicals, machinery, equipment, and materials used or consumed in the manufacturing, processing, compounding, mining, or producing of any product, or used or consumed in the processing of recovered materials, or used in research and development related to manufacturing,

1 processing, compounding, mining, or producing any product. The exemptions granted in this
2 subsection shall not apply to local sales taxes as defined in section 32.085 and the provisions of this
3 subsection shall be in addition to any state and local sales tax exemption provided in section 144.030.

4 3. In addition to all other exemptions granted under this chapter, there is hereby specifically
5 exempted from the provisions of sections 144.010 to 144.525 and 144.600 to 144.761, and section
6 238.235, and the local sales tax law as defined in section 32.085, and from the computation of the tax
7 levied, assessed, or payable under sections 144.010 to 144.525 and 144.600 to 144.761, and section
8 238.235, and the local sales tax law as defined in section 32.085, all utilities, machinery, and
9 equipment used or consumed directly in television or radio broadcasting and all sales and purchases
10 of tangible personal property, utilities, services, or any other transaction that would otherwise be
11 subject to the state or local sales or use tax when such sales are made to or purchases are made by a
12 contractor for use in fulfillment of any obligation under a defense contract with the United States
13 government, and all sales and leases of tangible personal property by any county, city, incorporated
14 town, or village, provided such sale or lease is authorized under chapter 100, and such transaction is
15 certified for sales tax exemption by the department of economic development, and tangible personal
16 property used for railroad infrastructure brought into this state for processing, fabrication, or other
17 modification for use outside the state in the regular course of business.

18 4. In addition to all other exemptions granted under this chapter, there is hereby specifically
19 exempted from the provisions of sections 144.010 to 144.525 and 144.600 to 144.761, and section
20 238.235, and the local sales tax law as defined in section 32.085, and from the computation of the tax
21 levied, assessed, or payable under sections 144.010 to 144.525 and 144.600 to 144.761, and section
22 238.235, and the local sales tax law as defined in section 32.085, all sales and purchases of tangible
23 personal property, utilities, services, or any other transaction that would otherwise be subject to the
24 state or local sales or use tax when such sales are made to or purchases are made by a private partner
25 for use in completing a project under sections 227.600 to 227.669.

26 5. In addition to all other exemptions granted under this chapter, there is hereby specifically
27 exempted from the provisions of sections 144.010 to 144.525 and 144.600 to 144.761, and section
28 238.235, and the local sales tax law as defined in section 32.085, and from the computation of the tax
29 levied, assessed, or payable under sections 144.010 to 144.525 and 144.600 to 144.761, and section
30 238.235, and the local sales tax law as defined in section 32.085, all materials, manufactured goods,
31 machinery and parts, electrical energy and gas, whether natural, artificial or propane, water, coal and
32 other energy sources, chemicals, soaps, detergents, cleaning and sanitizing agents, and other
33 ingredients and materials inserted by commercial or industrial laundries to treat, clean, and sanitize
34 textiles in facilities which process at least five hundred pounds of textiles per hour and at least sixty
35 thousand pounds per week.."; and
36

37 Further amend said bill by amending the title, enacting clause, and intersectional references
38 accordingly.
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